

FILED

NOV 07 2018

Clerk, U.S. Courts
District Of Montana
Billings Division

David Steven Braun
PO Box 563
Gallatin Gateway, MT 59730
406-404-2027
Dsb522@4securemail.com

**In The United States District Court
For The District Of Montana
Butte Division**

David Steven Braun

Plaintiff,

VS

Civil Action No:

CV-18-70-BU-Bmm-JCL

Bank of America N.A.

Defendant

Jurisdiction

1. This Court has jurisdiction over this action pursuant to
28 U.S.C & 1332(a)(1)

Venue

2. Venue is appropriate in the District under 28 U.S. & 1391(2). It is in the District off residents off the Plaintiff and is where a substantial part of the events took place that give rise to this action.

Parties

3. David Steven Braun is a citizen of the United States and Resides in Gallatin County Montana. My physical residence is at 155 Aurora Light Dr B10, in Big Sky Montana. Bank of America is Headquartered in Charlotte, North Carolina.

Summary of Case

- a. The Plaintiff was a Bank Of America Credit Card Customer since the mid 90's.
- b. The credit card was plagued with large amount of Fraud, I.E charges appearing on the statements from merchants in say Florida when the Plaintiff was living in Montana and Nevada.
- c. Their were also two events one in Las Vegas around 2011 where shortly after the incident the Plaintiff was hospitalize under questionable circumstances, vomiting, slurred speech, unable to stand. He has not worked since.
- d. In addition the Plaintiff believes that the real time charges were routinely looked at internally buy bank employee's and provided to people out side the bank in an illegal and improper manner.
- e. Towards the end off the credit card, the company contacted the defendant approximately 24 times in a 2 ½ month period. This occurred at the same time as at least two other credit card companies called the Defendant at the same or greater frequency.

- f. The Plaintiff notified a legal address at the end of 2013 Exhibit 1, stating that there was an issue and could potentially expect a law suite. The letter, Exhibit 1, clearly stated that I thought the claim against the bank far exceeded the outstanding balance on the card. The company became unresponsive. At no time did they deny any of the accusations.
- g. Approximately a year and a half later the Bank served the plaintiff with a collection law suite in the local district court. At no time did they respond to the accusations or were able to show that they had attempted to contact me before proceeding in court on the collection matter.
- h. During the suit they did not deny that they did not attempt to contact the Plaintiff before proceeding against a Pro Se party in District Court on what the court was lead to believe was a simple collection matter.
- i. During the Case, I responded that I had a counter claim. The counterclaim was asserted, and it was improperly dismissed due to incorrect Ex Parte communication.
- j. After that the Bank was served a Request for Production, and even while in court they still refused to produce the majority of the records to the account. They also refused to allow the collection suite to be dismissed.
- k. When they refused to produce the records, the Bank assumed the liability even if the issues were not the direct fault of the Bank's employees.
- l. The collection suite ended in a working Judgment in a District Court due to the opposing counsel's negligence which I had to satisfy at great personal hardship to my family. This further created stress on my life, and prolonged the counterclaim and put the Bank's Collections claim ahead of a Pro Se personal injury claim which they caused.
- m.
I am aware of at least three law firms the Bank has retained at different times to deal with this issue. It has taken over two to three years just to get this corrected, much less to compensate me for the Damage to my health and life.

Facts

1. The plaintiff was a victim off illegal wire tapping and electronic surveillance. To show proof and background, see 1:14-cv-01286-JEB in DC Federal, and 2:13-cv-00036-DWM in Butte. In this case, I was told twice to affect proper service twice or do 30 days contempt.
2. These electronic surveillance problems extended into cards. The Defendant was sent a letter dated 12-18-2013 Exhibit 1, stating some off the problems and specifying that I believed their was a large civil liability, far greater that the out standing balances on the card, and that in the future they might expect a law suite. This copy was returned to the Plaintiff in response to a request for production in the collection case in Bozeman District Court. The letter went un-responded to.
3. Apparently, the Plaintiff fails some kind of high level background check that is required to be run buy the defendant before settling a law suite. Without ever speaking to me, the defendant contacted the chambers of the State District Judge and lead him to believe that their was some kind off issue that would fall under a rule 12(d) situation. This caused the district court to dismiss the counter claim. It is my understanding that due to this background check failing, the Defendant was unable to respond to the letter. I.E. They never stated they didn't feel that their was a claim, but was unable to legally offer me any kind off private settlement due to this background check failing.
4. In Late Aug early Sept of 2015, Approximately a year and half after the company was notified with exhibit A and had not responded, their was a nock on my door in Big Sky Montana handing me a summons to a collection case in Gallatin Valley District.

5. In response to the claim, I filled Exhibit 2 with the court, a counter claim.
6. It is my understanding that the Plaintiff ran a high level civil background check through, and filled the very strange motion to dismiss that are Exhibits 3 and 4.
7. I did oppose the motion to dismiss with Exhibit 5. But was un aware off the statement or about this background check failure.
8. Without any hearing or any communication from either the venue or apposing counsel, the court dismissed the Counter Claim see the order in Exhibit 6.
9. It is my understanding, that without ever speaking to me, or even mentioning that they had run this Civil Background Check, the Plaintiff notified chambers Ex Parte, that the district court had no authority to render a Judgement or settlement for this Particular Plaintiff. It is my understanding that this is usually due to a prior contractual event with the US Federal Government. No such contract exist for the Plaintiff. I filled Exhibit 10, asking for a record off exactly what said in the Ex Parte statement, it went un-responded to.
10. A motion dated 12-17-2015 Exhibit 7 which requested an investigation into criminal behavior on the part off the Plaintiff went un-responded to.
11. The 12-17-2015 motion generated a police contact on 12-25, which was reported to the court in Exhibit 8. The local sheriff still will not produce the detailed statement from the B of A Employee that caused the contact.

12. A 2/5/2016 motion to establish fact's, Exhibit 9 went un-responded to.
13. The Plaintiff served apposing counsel with a request for production dated 6/20/2016. It is Exhibit 11.
14. The Bank responded with Exhibit 12. Of the 9 Points requested, the Bank felt that 2 did not exist, I.E their was not any authorized court ordered access, or any authorized down stream access buy Federal Law Enforcement or Intelligence. The other 7 requests for records were not voluntarily complied with. They did provided a partial call log, which showed approximately 24 contacts in a 2 ½ month period.
15. In September of 2017, the plaintiff filled his first law suite against the Bank in Butte Federal. In the complaint, it was clearly stated that the Plaintiff is unaware of any reason why he should be failing this civil background check. It is my understanding that this is generally associated with clauses in senior military service contracts. The Plaintiff has never served in the military.
16. In this situation, it is my understanding that the proceedings would proceeded along rule 12d. Rather than, or in addition to filling a motion to dismiss, the Bank had the right to request a summary judgment under rule 12d if they had something ancillary to present, like an actual military service contract or service record. As stated in the complaint, nothing tangible was presented, and their was no request for a summary Judgement.
17. Now up until this point, it may halve been impossible to discuss any kind off private settlement until the issues was brought before some kind judge. You might say that this violated the Banks Rights to a normal civil process. When

the court granted the Bank's motion to dismiss, there was no statement of Final Judgment or Final Order in the opinion. If allowed to proceed straight to trial, and a Judgment was entered, this could be an instant issue on appeal.

18. Since the Butte case, the Plaintiff sent the included request for settlement to the General Counsel's office at Scharlet North Carolina. Exhibit 23. For the first time, based on this letter, I did receive the included response from the Bank. Exhibit 24, with a couple of weeks. While they stated they have no interest in settling and were very rude, for the first time, I did receive a response from a letter addressed to their general counsel's office while not in court. Up until this point they have just been un-responsive.
19. The Bank was still unwilling to discuss privately their responsibility to compensate the plaintiff for their criminal actions. Therefore I am filing this suite. Unfortunately this matter requires its day in court.
20. As far as November 2018, Exhibit 22, even though I had paid the Judgment in Feb 2016, Exhibit 25, and it was actually recorded with the clerk on 3/29/2017, Exhibit 26 the Bank of America credit card is still being shown as under collection on my credit report. I was denied several very favorable car loans due to this entry. Several Lending institutions brought this to my attention while on the phone shopping for a favorable auto refinance loan. They then subsequently did not make a loan offer.
21. To this date, the defendant has retained I believe up to three different law firms. They have generated thousands of pages of legal documents in several court houses, they insisted on entering a 36,000 judgment, they have not freely produced basic records on the account, but they have in no way made a settlement offer of even 1 dollar.

Counts/Claims

Count 1

Failure to contact Plaintiff before starting Collection Suite.

22 Plaintiff incorporates the above allegations by reference.

23 Rights and/or laws that I believe were violated.

a. As a minimum, I believe the Defendant was Negligent in starting the collection suite in Bozeman District without contacting the plaintiff to discuss the issue off the outstanding debt. The law suite was started without notice or contact after the Bank had been sent a letter a year and a half earlier, and became un-responsive.

b. I further believe that the Defendant intentionally started the collection suite, with the express intent on causing the Plaintiff harm. That they started it knowing there was a counterclaim, and intentionally did not contact the Plaintiff before proceeding in court. I believe they started this suite with the intention of entering a Judgment and then amusing themselves by ordering leaving agents to pick clean the defendant's silverware.

c. I believe this behavior was to the level that it also probably broke several criminal laws. In that it was intended to cause physiological if not bodily harm. And that the lawyers would have to legally consider any counter claim, before filing a debt collection suite on a Pro Se defendant.

24. Dates and Times involved with this claim.

- a. In approximately September of 2015, there was a knock on the plaintiff's door. I was handed a summons to the Bozeman district collection suite.
- b. I disclosed a counterclaim dated 9/8/2015. It was quickly dismissed due to improper ex parte communication. This left only the collection part of the claim in front of the district Judge.
- c. The Plaintiff was forced at great stress and harm to myself and to immediate family members to satisfy the Judgment, with a check dated Feb 8, 2017.
- d. Even though the outstanding balance was paid, Bank Of America is still appearing on my credit report as of this month, and caused several companies to deny me credit at a favorable rate to re-finance an auto loan.

25. Supporting Facts

- a. The defendant was asked via a motion dated 12/17/2015, Exhibit 7 to inform/alert "Highly Criminal Behavior" surrounding the starting of an intent of this suite. It went un-responded to. It did generate a police contact from Charlotte Security.
- b. A motion dated 2/5/2016 to "Establish Facts" Exhibit 9 clearly stated that the plaintiff was in no way notified or contacted prior to the service of this suite. It also stated that the Bank had been sent a letter dated 12/18/2013, Exhibit 1. This was not disagreed with or responded to either.

- c. A letter was retrieved buy a request for production. It had been sent to the bank legal department complaining about serious problems with the account and stating that I though the Personal Injury claim from the banks actions far exceeded the Balance on the Card. This letter went un-responded to. And their was not contact until the nock on the door.
- d. Their was a request for production of documents served dated 6/20/2016, Exhibit 11. Items 7, a request to produce the results of the 12/17 motion for Criminal Behavior , and Item 9, a request for communications and records on how the suite got started was not voluntarily complied with. Both Items found responsive documents in existence.
- e. A skip trace was returned from a subpoena at the Baxter Post office. It requested the physical address of my Big Sky PO Box. In a letter in response to a complaint with the Fair Debt Collection act people. Rausch and Sturm state that they sent a letter date June 5 2015, Exhibit 27. They stated that an actual copy off their 30 letter was included with this response, it was not. The Skip Trace from the Baxter Post Office was also dated June 5, 2015, Exhibit 28. The Big Sky post office provided my physical address to Rausch and Sturm. I think this clearly shows that the Law Firm intended to start aggressive in court collection proceeding without even contacting me, offering a Payment plan or even discussing the counter claim letter that was sent to the Bank a year and half earlier and had gone un-responded to.

26 Bank of America and Rasch and Stern were involved with this count.

27. Injuries

Their was serious emotional stress and physically quit a bit off time I had to invest in dealing with this issue. It was quit obvious that the defendant intended to levy the plaintiff as soon as the Judgement hit the docket. Their were several deliberate errors in starting the suite and in the dismissal that might halve been handled better had an experienced attorney that understood civil procedure bin available. This further created stress, and required a further investment off the Plaintiffs time. The defendant was directly responsible for the plaintiff inability to pay the outstanding balance. Due to the defendants actions, I do not believe it is possible for the Plaintiff to return to a normal carrier that he enjoyed before these event took place.

28. Requested relief.

For the time, pain, stress, of halving to deal with the collection suite and the counterclaim. To be made whole, and to be able to proceeded forward with a reasonable standard off life, I am asking for 2,500,000 shares of BAC for actual damages. I also believe that above and beyond this, punitive damages are appropriate in this count.

Count 2

Causing the phone to ring un-controllably

29. Plaintiff incorporates the above allegations buy reference.

30. Rights or Laws that were violated.

- a. I believe as a minimum the Bank is Negligent if they felt they need to do discuss issues surround the card, a delinquent balance etc, they had a duty to do this in non harassing or in way that would not inflict physical, emotion or physiologic harm. I was contacted over 24 times in a 2 and a half month period. When finally asked for legal address and sent a letter to the banks lawyers, it went un-responded to.

- b. I believe the bank made these harassing calls with the intent of knowingly causing harm. These calls occurred at the same time as at least two other banks call centers contacted the plaintiff with the same or greater frequency.
- c. I believe that in this particular case, the frequency and behavior off calls from the Banks Call Centers rose to the level violating criminal statutes. That they did this with the intent of causing harm to the Plaintiff.

31. Approximate dates the issues occurred.

- a. At about the end of 2013, after systemic problems with fraud, improper access, and harassing calls to manipulate the credit line, the Bank Call Centers started a persistent an very aggressive harassment campaign. I was contact over 24 time in a two and a half month period, Exhibit 29.
- b. At the same approximate time, I was getting similar calls from several other card companies, including Citi, and JP Morgan.

32. Supporting Facts.

- a. I finally got annoyed and asked the call center for an address that the Bank Lawyers familiar with the card unit could be reached. I sent the letter dated 12-13-2013. Among the complaints it stated the bank contacted me repeatedly and that I thought their was a civil claims much greater than the out standing balance.
- b. A Request for Production of Documents dated 6/20/2016 was served to the Banks Counsel. Under Montana State Civil Procedure, all that is

required is an open case. Discovery does not need to be specifically scheduled. The Defendant responded with a document dated 6-26-2016. They did not provide a complete record off all phone contacts, but they did provided a piece of the call logs. It showed the Bank contacted the Plaintiff at least 24 time in a 2 and half month period around the end of 2013, Exhibit 29.

- c. Even though at this point, the past due balance was paid by a check dated 2-8-2017 that satisfied the Judgment entered in Bozeman district, the card still appears on a credit report dated 10-16-2018 as in collection and has caused several lenders not to offer me credit at favorable rates.

33.

This claim involved the Bank Of America. This is all that is covered in this suite, but Chase cards as well as city were also involved at making harassing phone calls at the same time .

34. Injuries.

It was quite clear that the Bank after being a cause off the problem, intended to collect aggressively, you might say criminally. This created physiological stress to a point that it caused physical harm and damage to my general health. It was also quite clear, that I would halve to deal with this at own devices. Investing further my own time. Due to the amount off stress, my age, my current health, I do not believe that it is possible to return to a normal profession as I did before these incidences involving the Bank occurred.

35. Requested relief.

For the time, pain, stress, created buy the calls. To be made whole, and to be able to proceeded forward with a reasonable standard off life, I am asking for 2,500,000 shares of BAC for actual damages. I also believe that above and beyond this, punitive damages are appropriate in this count.

Count 3

Failure to produce records regarding Fraud and security breaches surrounding the account.

36. Plaintiff incorporates the above allegations buy reference.

37. Rights or Laws that were violated.

- a. I was Bank Card Customer. As a minimum, if asked you would expect the Bank to be able to provide specific records regarding the account. This as a minimum make them Negligent.
- b. In a response to a request for production when in court. The Bank still did not voluntarily provide the requested records. They knowingly and willfully refused to furnish the details off the fraud and other requested records surrounding the account.

38. Dates and Approximate time surrounding the claim.

- a. The Bank of America card had systemic fraud problems. Their were also some notable security violations. Item 5 in the request for production sighted two specific incidents Item's 7 and 8 in the counterclaims, and requested the detailed records as well as any other records off fraud

and disputed charges that was on the account. The Request for production was dated 6/20/2016, Exhibit 11.

- b. There was a successful attempt that gained access to my online account in the mid 2000 while I was working in New York City. My password kept changing. I had to use the challenge question to get into the account. Once in, the email address of the owner had been changed from my msn account to a Syrian email address. I checked my credit report, there was an attempt to gain an authorization at a Texas Ford Dealership which was unsuccessful. They were not able to purchase a vehicle.
- c. The second event was I had a knocked down drag out fit with a Bank Of America Supervisor. I had gotten a re-occurrent charge. I had stopped it and it started again. The company was very deceptive in that it sent me numerous emails, and re-started it without my consent. I convinced a Bank Of America supervisor to remove the charge, and I think she shut down their company's ability to submit credit card charges electronically into the Visa Payment System. A short time later, a charge for an air line ticket in a completely different name, flying out of Las Vegas McCarran to a third world country appeared on one of my cards, and I hit a Henderson emergency room at 4 in the morning, vomiting, unable to stand slurred speech. I have not worked professionally since shortly after this incident.

39. Supporting Facts

- a. Details of the above incidences and a record of all fraud on the account was requested in Item 5 of the request for documents.
- b. Even when formally requested while in court, the Bank did not voluntarily comply with the request. They stated they feel that this

request seeks confidential and competitively sensitive informatization. See Exhibit 12, their response.

40.

This count involves Bank Of America. Note, that by not releasing these records, in timely manner, the bank prevented knowing the true facts of a potential claim. I would liken this to their being records of a police or FBI investigation and then law enforcement not furnishing the detailed records to you or your attorney. At this point, the Bank has assumed the Civil liability.

41. Injuries

- a. This is a court of law, and in the civil process, the entity that does the harm or causes the damage is financially responsible. You can process serve or sue civilly just about anything. But gain a judgment or start suit you would need specific and detailed evidence. When the bank consistently refused to furnish the details of these events, it makes it impossible to proceed against the guilty party. I would liken this to contacting the police for a report on a fatal car accident and then having them refuse to furnish it. This would prevent the victim from pursuing a normal civil process. And it would also hamper even the basic task of retaining counsel because you have nothing to show them.
- b. Since the incident in Henderson, the Plaintiff has really not been able to work in his profession. The Bank has still not produced the records, and I submit that this has really harmed me and that at this point they have assumed the liability of this issue for failure to behave as expected and simply produce the records from the account.

42. Requested relief.

For the time, pain, stress, created by the event that were mentioned. Taking into account that the Plaintiff has not worked since the 2011 medical event in Henderson, for which the Banks Card played a major role. To be made whole, and to be able to proceed forward with a reasonable standard of life, I am asking for 3,000,000 shares of BAC for actual damages.

Count 4.

Improper Access to the credit card charges.

43. Rights or Laws that were violated.

- a. As a minimum, you would expect the bank to respect and protect a card members privacy, and not disseminate or access card holder data in an inappropriate manner that violates the customers privacy.
- b. I believe the Bank knowingly did this, and used the data and acted in such a manner that they knew it was intended to cause the customer harm.
- c. I believe that this is also a breach of the card holder agreement and the privacy policy and their for a breach of contract.
- d. I believe that this also constitutes conducting warrantless surveillance on a US Citizen on us soil.

44. Dates and Approximate time surrounding the claim.

- a. This was complained about in the 12-18-2013 letter, Exhibit 1 and the counterclaim dated 9/8/2015. This type of issue relies on kind of

invisible. It can be done a number off ways, including buy a third party if the data is being legally exported. Through computer hacks, or improper access from internal employees.

- b. Even evidence existence that shed some light on this issue, was not know until the response to the request for documents dated July 26 2016.
- c. Note, even though now paid, the Bank Card still appears on my credit report as under collection, and prevented the plaintiff from be offered an auto refinancing loan at a favorable rate as late as Oct of 2018. See Exhibit 22.

45. Supporting Facts

IN the response to the request for documents, Exhibit 12, the bank did state they made a reasonable attempt to look into the account and weather there were any down stream access buy law enforcement or military intelligence, and weather their was any court ordered access. These they felt their was no evidence to support these items. But they refused to respond voluntarily to Item 3. The Date and Times of any Bank Employee viewing the charges internally.

46.

This count involves the Bank Of America.

47. Injuries

- a. Federal Law enforcement, uses credit card data to track and apprehend fugitives. You halve the right to remain silent, but the one thing you do halve to do is identify your self to a law enforcement officer. So, if you can find the location off a person with an arrestable warrant, you can walk right up, ask them to identify them selves and scurry them off to jail.

- b. The Plaintiff has never been arrested, but their were multiple issue of strange health problems, and also either employees or patrons that frequent the same venues being contacted or told to observe the Plaintiff.
- c. It is unclear exactly what the data was used for, or who it was furnished to, but their have been 4 to five issues of foreign substances, mikes, ralfess served in local restraints where the plaintiff was know to eat.
- d. Their were also several other obvious incident's where the plaintiff was contacted buy a fire arms dealer in another state several weeks after purchasing a riffle. The contact was obviously inappropriate. It was not done buy federal law enforcement. The way the exact dealer was located was from viewing credit charges.
- e. Quite a bit off this can be traced back to improper access and viewing off real time credit card charges in the Banks Computer.

48. Requested relief.

For the time, pain, stress, created buy the event that were mentioned. Taking into account that the Plaintiff has not worked since the 2011 medical event in Henderson, for which the Banks Card played a major role. To be made whole, and to be able to proceeded forward with a reasonable standard off life, I am asking for 3,000,000 shares of BAC for actual damages, for this count. Since the particular facts off this count show that the data probably was not obtained through an outside hack, but rather the banks employees accessing the data, and either using it or providing it to third party, I believe this was an intentional and deliberate violation off the Plaintiff right to privacy, and their for potentially subject to Punitive damages.

Background on Plaintiffs previous Military Service and Executed Contractual Agreements.

As stated in the previous court case in Butte, it is my understanding that the Plaintiff is mechanically failing some kind of civil background check. This was clearly stated in the Butte complaint, and nothing was presented to the court and a Conversion to summary judgment under 12d was not requested for the issues covered in this suite. Nothing regarding this issue has changed. I believe I am still mechanically failing this check, but nothing new has changed that would cause the issue to be revisited. I am in the process of attempting to get the bad data point removed. I am not an attorney, they are very vague as to the actual vendor of this system, what is exactly in the database or how you would actually go about getting a bad piece of data removed. But I am unaware of any reason this suite cannot continue. And as you see, once this is stated, there is no longer any calls to the court house deputy, and there is no mention or attempt to the court whatever this magic database puts in front of the General Counsels face.

David Steven Braun



Po Box 563
Gallatin Gateway, MT 59730
406-404-2027
dsb522@4securemail.com

11/5/2018